IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

RCRev..No. 118 of 2007()

RCA.96/2005 of II ADDL.DISTRICT COURT, ERNAKULAM
RCP.118/2004 of III ADDL.MUNISIFF'S COURT(RENT CONTROL),ERNAKULAM.
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REVN. PETITIONER/APPELLANT/RESPONDENT

ABDUL KAREEM, AGED 55 YEARS,
S/O. KUNJU MOHAMMED, MARADU VILLAGE,
KANAYANNOOR TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.L.P.ARAVINDAKSHAN

RESPONDENT:RESPONDENT/PETITIONER

KUNJU MOHAMMED, AGED 65 YEARS,
S/O. MOHAMMED, KILIPARAMBIL @ OTHUPALLI,
MARADU VILLAGE, KANAYANNOOR TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.S.SREEKUMAR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 02/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.917/2007 IN RCR.NO.118/2007

Dismissed

Sd/- P.R.RAMAN,JUDGE.

2/4/2007 Sd/- ANTONY DOMINIC, JUDGE.

P.R.RAMAN & ANTONY DOMINIC,JJ.

R.C.R.NO.118 OF 2007

Dated this the 2nd day of April, 2007

O R D E R

Raman,J.

This is a revision at the instance of the tenant, who is faced with an order of eviction passed under Sections 11(2)(b) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act. Initially the Rent Control Court ordered eviction under Section 11(3) also; but that was vacated by the Appellate Authority.

2. The respondent as the landlord sought eviction of shop room No.IX/288 (IX/250) of Maradu Grama Panchayat described in the petition schedule. According to him, the rent was Rs.600/-. The appellant is conducting a public telephone booth. He committed default from 1/9/2003 in the matter of payment of rent. Petition schedule premises is a part of a larger building and the landlord is in possession of adjoining room bearing No.IX/287 (New No.IX/251) and is conducting a restaurant under the name and style "Safna Hotel". He wanted to expand the business by starting a cool bar and ice cream parlour. But the accommodation available to the landlord is insufficient and he needed the room occupied by the appellant for

expansion of his business. The tenant contended that he had paid Rs.25,000/- as 'Pakidi' and also paid the rent upto March 2004 and hence the allegation that there is arrears of rent is untrue. He also denied the averments made in the petition as respect the additional accommodation needed by the landlord. In this case the landlord was examined as PW-1 and Exts.A1 and A2 were marked on his side and the tenant was examined as RW-1 and Exts.B1 and B2 were marked on his side. Commission report is also marked as Ext.C1.

3. The Rent Control Court, after considering the evidence on record, ordered eviction under Sections 11(2)(b), 11(3) AND 11(8) of the Act. On appeal the Appellate Authority re-appreciated the evidence on record and found that there is no dispute that the rent was in arrears from 1/9/2003. But according to the tenant, he had paid the rent by money order, which was refused to be accepted by the landlord. In support thereof Ext.B1 was produced. This was admitted by the landlord. According to the landlord, the tenant had paid one month's rent and there is huge arrears of rent due from him and that is why he did not accept the same. According to him, the rent is in arrears from September, 2003. But in the absence of any cogent evidence that the tenant has paid the rent for

the entire period, which is alleged to be in default, the burden is on him to show that he has discharged the payment. The Appellate Authority agreed with the finding of the Rent Control Court regarding the arrears of rent. As against the plea that an amount of Rs.25,000/- was paid as 'Pakidi' the landlord had admitted the acceptance of Rs.10,000/-. However, the tenant did not seek adjustment of Rs.10,000/- towards arrears of rent. According to the Appellate Authority, even though some amounts have been paid to the landlord, it would not cover the entire amount mentioned in Ext.A1. Therefore, it was found that the Rent Control Court was justified in granting eviction.

4. In the latest decision of the Supreme Court it has been held that there is any security amount left with the landlord of a higher sum, the landlord cannot seek eviction on the ground of arrears of rent, unless there is no arrears after adjusting the said amount. In this case admittedly Rs.10,000/- was paid and the court below did not consider whether there was any arrears of rent as on the date of petition.

5. In the circumstances, we vacate the order of eviction passed under Section 11(2)(b) of the Act. However, the finding under Section 11 (8) of the Act is a concurrent finding of fact by both the courts below.

Admittedly, the landlord is conducting a restaurant in the adjacent room. He wanted to expand his business by starting a cool bar and ice cream parlour. He had tendered evidence in support of his case. If so, the tenant cannot dictate the landlord with regard to the choice of the building. When he is conducting a restaurant and he wants the adjacent room for expansion of his business, the bona fides of the landlord cannot be doubted and the courts below found that the bona fides of the landlord stands proved on an appreciation of the evidence.

6. In the above circumstances, we do not find any good ground to interfere with the finding under Section 11(8) of the Act and the same is confirmed. The Revision Petition is liable to be dismissed as against the order of eviction for additional accommodation.

7. At this stage of the proceeding, the learned counsel appearing for the Appellant sought a reasonable time to give vacant possession of the premises. In the facts and circumstances of the case, we think that the petitioner/tenant should be given a reasonable time for shifting his business and to give vacant possession of the premises. Accordingly, we direct that the execution petition if any filed pursuant to the order of eviction shall stand deferred for a period of four months on condition that

the petitioner/tenant gives an undertaking in the form of an affidavit to surrender vacant possession of the premises on or before 2/8/2007, before the execution court within a period of three weeks. He shall not induct any third party into the premises. As on the date of vacant possession any portion of the amount remaining with the landlord unadjusted towards the rent shall be refunded. If the petitioner fails to comply with the conditions as above, it will be open to the landlord to seek eviction of the premises.

Revision Petition is dismissed as against the order of eviction passed under Section 11(8) of the Act, subject to what is stated above.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.